Economists should not be involved in deciding the case for resale price maintenance, argues Dr Darrin Baines. Instead, a new approach should be taken to negotiations

Fair trading for pharmacists

The resale price maintenance case is in a mess and the Restrictive Practices Court is looking for another economist to help solve its problems. However, all any economist can do is to work within a provided framework to produce a pre-determined outcome, which either favours the Government or pharmacists, but not both.

The issue should instead be resolved by direct negotiations between pharmacists and the Department of Health. It is difficult for the Restrictive Practices Court to produce a satisfactory outcome in this case because it is constrained by legalities. To help both sides climb out of the ever-deeper hole they are digging for themselves, proceedings should cease and some common sense, straight talking should begin.

The cost of free prices

The pricing of medicines is not a legal, but a policy issue. The Government does not allow free prices for branded or generic drugs bought by the NHS. The markets for these products are strictly regulated because of the damage that unconstrained trade could do to the health service and patients.

If RPM is abolished and medicine prices fall, pharmaceutical companies will have to compensate for their loss of earnings by charging more for NHS medicines. The end of price fixing is therefore likely to lead to price inflation for government-purchased drugs.

State intervention

While the ideology of the free market does not apply to medicines, it is also not appropriate that their prices should be set by manufacturers. Medicine prices should be regulated by the state, like other pharmaceuticals.

Given the above, the Restrictive Practices Court should not analyse whether free or constrained prices are desirable, but should examine whether private or public pricing controls are preferable. Indeed, the issue for debate is not whether medicine prices should be fixed, but who should fix them.

Uncosted knowledge

Modern pharmacy is an economic disaster for pharmacists. They spend years training as professionals, but are unable to charge directly for the information they provide to consumers. Few other professions have to bear this burden, as they often charge the client for their time, not their services.

Pharmacists are not meant to earn their incomes solely from dispensing drugs. The dispensing fee owes its origins to Lloyd George, who made pharmacists dispensers to stop general practitioners from earning income from supplying the products they prescribed. The role of pharmacist as dispenser is an accident of history and has seriously constrained the ways in which the profession has developed.

RPM goes some way towards ensuring that pharmacists are properly rewarded for providing knowledge to patients who have not seen a general practitioner first. If the Restrictive Practices Court calculated the true value of the advice provided by pharmacists selling over-the-counter drugs, the resale margins on most medicaments would probably be found to be woefully inadequate.

Through the gateways

The Office of Fair Trading is in a difficult position. It has to fight the medicines case on the basis of the five 'gateways' allowed by the Resale Prices Act, 1976. In effect, these gateways state that RPM should not be abolished if small pharmacies or consumers will suffer. In response, the Office of Fair Trading has been collecting data and seeking expert opinions on what would happen to these groups if abolition were granted.

> "The Restrictive Practices Court must decide whether it believes in the survival of the fittest or the protection of an endangered species"

If it really believed in free, unregulated competition, the Office of Fair Trading would refuse to fight the RPM case on the basis of the five gateways. Unconstrained markets are meant to regulate themselves and to automatically lead to transactions that benefit both consumers and producers. By failing to argue that RPM should be abolished regardless of the consequences, the Office of Fair Trading is implicitly acknowledging that a free market for medicines is not necessarily a good thing.

'History matters'

In recent years, many economists have rejected the conventional, market-focused approach to economics. Instead, these new practitioners have argued that "history matters", in the sense that the economic outcomes we view today are the result of an evolutionary process which has constrained what we are able to achieve with current resources.

From an evolutionary perspective, RPM can be seen as a 'routine', that is, a mechanism that pharmacists use to generate the income necessary to stay in business. In nature, no species constantly re-invents the way it gathers the food necessary for survival. Once a routine fails, a species becomes extinct. The same is true for pharmacists: if RPM is abolished, they will lose a routine that helps them survive.

With limited commercial opportunities available in community pharmacy, if new species (such as supermarkets) enter the local pharmaceutical environment with more successful routines, independents may glean smaller and smaller pickings. Eventually, because of the hardships they encounter, pharmacists who are reliant on the RPM routine will die out.

Using the evolutionary metaphor, the Restrictive Practices Court must decide whether it believes in the 'survival of the fittest' or the protection of an endangered species. From an ideological perspective, economists who believe in markets believe in the former, because only by allowing the weak to fall and die can economies become more efficient.

Environmental shock

It didn't matter how big or successful any species of dinosaurs was, the day the meteorite came, they all died out. Successful routines only ensure

survival in the absence of extreme environmental change.

Much of the evidence produced at the RPM hearing relates to changes in the position of community pharmacists since the early 1970s. However, this information is now irrelevant, as it was collected before the announcement of the Government's national plan for pharmacy.

If the initiatives launched by the national plan for pharmacy are as revolutionary as the Government intends, community pharmacies will soon experience an extreme environmental shock. If it abolishes RPM, the Restrictive Practices Court could make it harder for pharmacies to survive in a harsher commercial environment.

The myth of unity

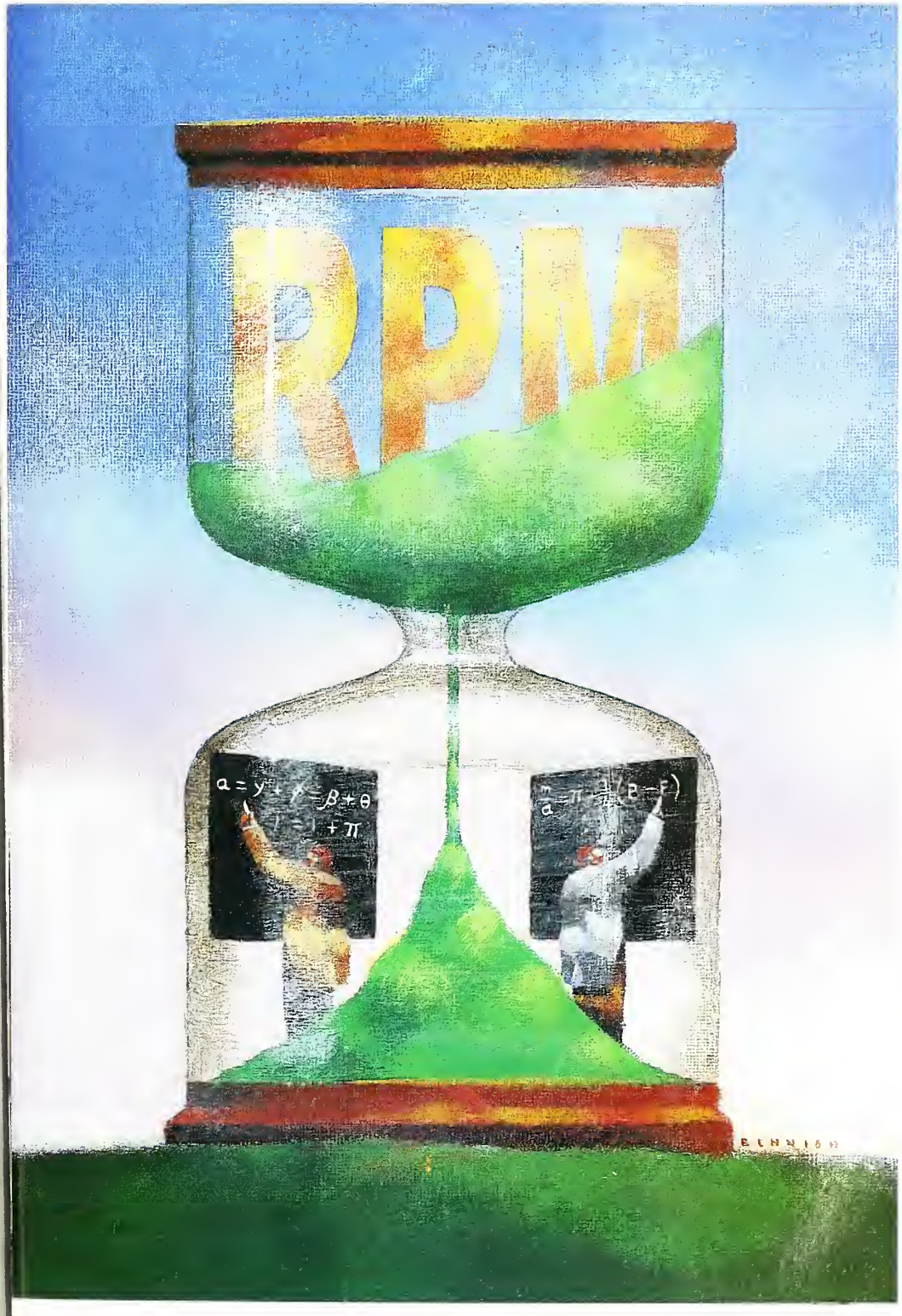
Pharmacists are not a united group of professionals. Within the industry, a whole range of competing groups openly vie with each other as the suppliers of drugs. As a result, it is easier for pharmacists to agree over professional issues than over trade disputes, which are much harder to resolve.

In relation to RPM, a concerted campaign has been fought – at a national level – on the basis that pharmacy is a united profession. Instead of waiting for the national campaign to deliver a victory, each concerned pharmacist should fight his or her own corner in this case. If rank-and-file pharmacists wait for their political leaders (whose personal incomes, often, do not depend upon medicine sales) to save the day, they may eventually find themselves extremely disappointed.

Fair deal for pharmacy

For years, community pharmacists have cross-subsidised their NHS work with private income from medicament sales. Successive governments have realised that price-fixing by producers has supported NHS pharmacy and have been happy for the practice to continue.

As consecutive governments have implicitly supported price maintenance, pharmacists should be compensated if it is removed. For example, they should receive a one-off payment for the loss of future income, a settlement for the money they have previously donated to the state and compensation for a fall in the value of their businesses. Indeed, the Government has under-funded community pharmacy for years and relied on RPM to make up the difference.



Jason Bennion

The right judgement

Before reaching its final decision, the Restrictive Practices Court must decide whether the RPM case is about competition or health policy. If it is about the former, the gateways should be ignored and free markets should automatically be introduced. If the case is about the latter, the issue should be referred back to the experts at the Department of Health.

The Restrictive Practices Court must also decide whether the case is about pharmacy as profession, or about pharmacies as the individual suppliers of medicines. As the government contracts directly with individual suppliers, arguments that consider the impact of abolishing price fixing on the profession as a whole should automatically be dismissed by the Court. Indeed, proceedings should only be concerned with the plight of each pharmacy – on a case-by-case basis – and not on a hypothetical population of pharmacists that does not actually exist.

Reaching the end

In an ideal world, where legal niceties were balanced by an understanding of the practical consequences of any decision, the Restrictive Practices Court would have automatically dismissed the RPM case. It is only being heard as a legal – rather than a policy – issue because of an accident of history.

In reality, the hearing is likely to continue, and the biases built into the legal and economic frameworks used will ensure that it reaches a predetermined outcome. Perhaps, before the case concludes, we should all consider whether some dinosaurs would have been worth preserving, and whether whales and tigers are the only threatened species we should try to save.

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